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C O N F I D E N T I A L SECTION 01 OF 03 NASSAU 000917

SIPDIS

STATE TO INL/LP
STATE TO WHA/CAR
STATE FOR L/LEI
JUSTICE FOR OIA
DEA FOR O/A AND O/I

E.O. 12958: DECL: 05/12/2015
TAGS: [BF](#) [KCRM](#) [PGOV](#) [SNAR](#) [PREL](#) [OPBAT](#)
SUBJECT: BAHAMIAN COURT DECISION HALTS
EXTRADITION PROCESS

Classified by: Charge Robert M. Witajewski
for reasons 1.4 (B) and (D)
Summary

[1](#)1. (C) A surprising May 10, 2005, decision from Supreme Court Justice Jon Isaacs has ruled the U.S. - Bahamas Extradition Treaty valid but constitutionally unenforceable due to a failure on the part of the Bahamian government to obtain parliamentary approval for public funds expended during the extradition process. The Government will request an expedited hearing next month of Judge Isaacs' decision by the Court of Appeals. It is likely that the losing side will appear to the Privy Council in London, the country's highest court. By questioning the implementation of the existing Extradition Treaty between the United States and The Bahamas, this decision has put in temporary suspense the extradition process to the United States. Fortunately, no pending extradition requests are near their final administrative or judicial stages. Charge and Narcotics Affair Officer visited the Director for Public Prosecution and the Attorney General's Chief Counsel to discuss the implications of Judge Isaacs' ruling and the Government's next steps. They suggested waiting for the Appeals Court ruling before sending new extradition requests to The Bahamas. Officially, the Government of the Bahamas, has expressed their commitment to the Extradition Treaty. End of Summary

Implementation of Treaty on Hold

[1](#)2. (U) In the hearings for the extradition case against Trevor Roberts, Devroy Moss, Sheldon Moore, Brian Deal, Lynden Deal, Shanto Curry and Gordon Newbold- six of the twelve defendants arrested as part of the Operation Busted Manatee a joint counter drug effort between US and Bahamian law enforcement officials- Bahamian Supreme Court Judge Jon Isaacs ruled in favor of the defendants on a Constitutional application filed that puts in question the implementation of The Extradition Act of 1990.

[1](#)3. (C) In a decision that Bernard Turner, Director of Public Prosecutions characterized as "astonishing", Judge Isaacs ruled that, although the Foreign Ministry was validly empowered to negotiate and conclude the treaty under the Constitution, all expenditure of public funds required an act of Parliament. The judge concluded that Article 18 of the Treaty (requiring each State to bear the expenses of an extradition request made by a Requesting Party) created a permanent financial obligation that must be appropriated by Parliament under the Bahamian Constitution.

[1](#)4. (U) In his 57-page decision, Judge Isaacs determined that expenses incurred during the extradition process "can properly be regarded as a debt or obligation of another" and that as such "a permanent imposition on public funds or the Consolidated Fund must be included in an Appropriation Bill introduced in the House of Assembly before the commencement of the financial year." He continued "I hold the view that where a permanent financial charge on public funds is to be made, the laying of the treaty should be done before it is entered into." The Judge accepted the defendant's petition that the Extradition Treaty of 1990 and the Extradition Act of 1994 while validly entered into, could not be implemented because "a permanent financial charge on public funds" was never approved by Parliament.

[1](#)5. U) As soon as the Judge issued the decision, the Attorney General's office requested a stay pending an appeal.

Gauging the Impact: On the eye of the legal storm

16. (C) In a meeting on May 11 with the Director of Public Prosecution, Bernard Turner, and Chief Counsel Francis Cumberbatch, Charge and NAO discussed the far reaching implication of this decision if it stands. The Attorney General will request to have the Court of Appeals hear the matter on an accelerated basis in June-before it adjourns for its summer recess.

17. (C) Turner acknowledged that the decision took them by surprise, but said he was fully confident of having it overturned on appeal. He admitted however, that the losing side in the Court of Appeals would appeal to the Privy Council in London. Although he downplayed the impact of Judge Issacs' decision on other ongoing extradition cases because none are in their final administrative or judicial stages, Turner underlined that attorneys for everyone fighting extradition cases "will be watching with interest the outcome of this case."

18. (C) As long as the Judge's ruling stands, the Director of Prosecution suggested that it is not clear that Foreign Minister Fred Mitchell would be inclined to sign an "Authority to Proceed" that authorizes the Attorney General to proceed with any new extradition requests from the U.S. In the Bahamian system, the Foreign Minister's signature is needed at two stages of the process: first, to authorize the Attorney General to initiate any extradition procedures in response to a U.S. request (the Authority to Proceed) and second, when all legal and administrative procedures have been concluded and the Bahamian government signs the document that authorizes the detainee to be handed over to the U.S. government (the Warrant to Surrender).

Official reply from the Bahamian Government

19. (U) The Ministry of Foreign Affairs forwarded to the Embassy diplomatic note number 127, dated on May 11, and it notes: (begin quote) The Ministry of Foreign Affairs has the further honour to advise that the Bahamas is committed to the Extradition Treaty between the United States and The Bahamas, The Office of the Attorney General has also advised that an appeal has been filed and the matter is under review. The Ministry of Foreign Affairs has also been informed by the Office of the Attorney General that the Judgment has been stayed by Order of the Court. As a consequence, the status quo ante remains in respect of the Extradition Treaty between our two Countries and the Ministry waits the outcome of the judicial process."

Comment

10. (C) With twenty-six extradition requests pending at different stages in the Bahamian court system, the potential impact of this decision, if it stands, is far-reaching. This is not the only "astonishing" ruling Judge Jon Isaacs has made. In the extradition case of alleged drug kingpin Samuel "Ninety" Knowles, indicted by the United States in December 2000, the Privy Council reversed Judge Isaacs ruling granting Knowles habeas corpus commenting in its majority decision that "substance rather than form governs. Semantics must yield to common sense" and that the judge had come to "an astonishing conclusion and erred" in granting the defendant habeas corpus in a way that was unappealable by the Government. The Attorney General 's senior attorneys are confident that this latest Isaacs' decision will similarly not withstand scrutiny by a higher court.
WITAJEWSKI